IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL CONTEMPT PETITION NO. 23 OF 2006

1. Suresh Rajeshwar and anr. ..Petitioners

Vs.

1. Raj Thackeray and ors. ..Respondents

Mr. P.A. Sebastian with Smt. Maharukh Adenwala for petitioners.
Mr. Shirish Gupte, Senior Counsel with Mr.Archit Jayakar i/by M/s. Khaitan & Jayakar for respondent No.1.
Ms. P.H. Kantharia, APP for respondent no.2.
Mr. Vinayak Shete for respondent no.3.
Mr. Sanjay Udeshi for respondent no.4.
Mr. Rajeev Pandey with Mr. Punekar for respondent no.5.
Mr. Sumit Deshpande for respondent no.6.

CORAM: B.H. MARLAPALLE & J. H. BHATIA,JJ.

Date of Reserve : November 30, 2006.

Date of Pronouncement: December 06, 2006.

P.C.:

1. This Contempt Petition arises from the alleged speech made by Mr. Raj Thackeray, the President of Maharashtra Navnirman Sena, a newly formed political party in Maharashtra, on 16/7/2006 at Shivaji Park, Mumbai. The said political party had called a public meeting on 16/7/2006 to pay homage (Shradhanjali) to

the victims of local train bomb blast occurred on 11/7/2006 in Mumbai and to share the grief of the victims' family members. It is alleged that the respondent no.1 Mr. Raj Thackeray in his speech in the said public meeting warned the lawyers from defending the accused involved in the Mumbai train bomb blast on 11/7/2006 that his party would organise protests and demonstrations against such lawyers and make it difficult for them to move around the city. It is claimed that these statements of respondent no.1 were widely reported by the print and electronic media.

2. Petitioner no.1 is a practising lawyer and also the Vice President of the Indian Association of People's Lawyers (IAPL) and the petitioner no.2 who is also an Advocate, is General Secretary of the Committee for the Protection of Democratic Rights (CPDR). IAPL is affiliated to International Association of People's Lawyers which has its headquarters at Utrecht, Netherlands. It works, inter alia, for the independence of the lawyers to take up cases without being intimidated and blackmailed by

vested interests. CPDR was formed post-emergency in 1977 and it works for civil liberties and democratic rights, of which independence of the judiciary is an important element. Both the petitioners are enrolled with the Bar Council of Maharashtra and Goa. They claim that the speech of the respondent no.1 in the public meeting held on 16/7/2006 was widely circulated in some of the leading newspapers both Marathi and English and published from Mumbai. These newspapers are, (1) The Times of India, (2) The Indian Express, (3) Free Press Journal, (4) DNA, (5) The Hindustan Times and (6) Loksatta. The respective newspaper cuttings have ben annexed to the petition memo and it is submitted that the said speech of Mr.Raj Thackeray amounted to criminal contempt as defined under Section 2(c) of the Contempt of Courts Act, 1971 (the Act for short). As per the petitioners the reported speech of Mr.Raj Thackeray at Shivaji Park which is one of the largest maidans of Mumbai came at a time when the atmosphere is charged with emotions and passions against those who are responsible for the train bomb blast on 11/7/2006 and the sentiments expressed by him in his capacity as one of the prominent leaders having a mass base of young and impressionable followers will

lead to an explosive situation where lawyers may not dare to defend the accused arrested and charged for the train bomb blast. This may lead to a situation where lawyers, who in the course of carrying out their professional duty of defending the bomb blast accused may be branded and labelled "anti-national" and "unpatriotic". The petitioners further claim that the speech of respondent no.1 will intimidate lawyers and deter them from appearing for these accused. The lawyers play an indispensable role in the administration of justice without whose participation, the criminal justice system would not be able to function and dispense justice, when it is one of the cardinal principles of the Indian criminal justice system that the accused is presumed to be innocent until proved guilty. Article 22 of the Constitution guarantees to every accused the right to be represented by a lawyer of his choice and Article 21 of the Constitution guarantees a right of fair and free trial to every accused. Any attempt to prevent lawyers from performing their duties amounts to criminal contempt. The respondent no.1 has the power and means to carry out the threats set out in his speech and if such threats are carried out, it would

undermine the authority of the courts and lead to a blatant violation of the rule of law. The supremacy of law and judiciary in carrying out its legal function is being eroded by an extra legal and extra constitutional factor and the speech is aimed at lowering the authority and dignity of the courts and to obstruct the rule of law as well as to interfere in the administration of justice. The petitioners, therefore, claim that there is a case for the respondent no.1 being committed to criminal contempt within the meaning of Section 2(c) of the Act. Before approaching this court they had approached the learned Advocate General, Government of Maharashtra, who has granted them consent under Section 15 of the Act on 31/7/2006.

3. Along with the petition memo, the petitioners have annexed the newspapers cuttings of all the above mentioned six newspapers, but initially none of the newspapers through their Editors were impleaded as the respondents and, therefore, we had allowed amendments consequent to which the Editors of only four newspapers, namely, (1) The Hindustan Times, (2) DNA,

(3) Free Press Journal and (4) Loksatta came to be impleaded as respondent nos.3 to 6 and the petitioners chose not to implead the Editors of the other two newspapers, namely, (1) The Times of India and (2) The Indian Express. Vide our order dated 5/10/2006 we had issued show-cause notice to respondent no.1 and at the same time notices were issued to respondent nos.3 to 6 to file their reply regarding the authenticity of the news published in each of the respective newspapers regarding the statements made by the respondent no.1 and which were alleged to be contemptuous. All the four newspapers' Editors have filed their replies, supported by the affidavit of the respective news reporter/correspondent.

4. Let us reproduce the alleged threats given by the respondent no.1 in his public speech on 16/7/2006 and as reported in the four newspapers :-

(a) Loksatta -

(b) Free Press Journal -

"Raj was addressing a condolence meeting organised by the party for the blast victims at Dadar. He also warned the advocates against holding the briefs for the accused saying that his party would make it difficult for such advocates to move around in the city."

(c) The Hindustan Times - dated 17/7/2006

"We will thrash the advocate who takes up the case for the accused in the recent bomb blast case."

The Hindustand Times - dated 2/8/2006

"Raj also challenged lawyers who want to file a contempt petition against him because he has threatened to physically harm anyone defending

the blasts accused:"Will they also fight cases for those misbehaving with their mothers and daughters?"

(d) DNA -

"Maharashtra Navnirman Sena president Raj Thackeray has appealed to the lawyers taking up the brief for bomb blast accused to "heed the call of ethics".

"How dare they take terrorists as their clients? Have they no sense of nationalism? If they are taking up their cases, I think they are equally culpable," Raj said, while launching the youth wing of the party at Ravindra Natya Mandir on Tuesday. Stung by the reported move by some lawyers to haul him for contempt, Raj said he stood by what he had said earlier. "Lawyers should not counsel those who have indulged in anti-national acts. And if they want to drag me to court, let them. I will face it." He asked "Would they have taken up their own kin in the blasts?"

. As for as the public speech of 16/7/2006 at Shivaji Park is concerned, the petitioners rely upon the following three newspapers reports, namely, Loksatta, Free Press Journal and the Hindustan Times. As per the petitioners, the respondent no.1 again on 1/8/2006, while launching Maharashtra Navnirman Vidyarthi Sena, a student wing of his party had reiterated his threats which were reported, amongst other, in DNA and Hindustan Times on 2/8/2006.

5. The respondent no.1 Mr. Raj Thackeray has, in response to the show-cause notice, appeared before us and filed his reply. At the outset, he has tendered his sincere and unconditional apology to this court in the following words:-

> "At the outset, I sincerely and unconditionally apologise to this Hon'ble Court, if what I allegedly said and/or did has in any way prevented this Hon'ble Court from the administration and/or the dispensation of justice and I therefore express my apologies

to this Hon’ble Court. I say that, I have utmost respect and regards for this Hon’ble Court. As a citizen of India, I believe in the Rule of Law and the paramount position of the Courts of Justice and the administration of justice".

. While dealing with the newspapers reports regarding his speech at Shivaji Park in the public meeting on 16/7/2006, he has stated that his speech has been grossly misinterpreted by the press reports and pointed out that none of the four press reports match each other and each one of them states that he said something different. While clarifying his position, he states in his reply,

"...In any event, what was said and what was intended by me was that my Party would stage demonstrations against Lawyers who did accept the brief of the Accused in the said Bomb Blasts, which demonstrations, any Person is entitled to convene."

He further clarifies that his statement was not to hamper the administration of justice but was inspired by a moral and social conscience and it was to appeal to the citizens of Mumbai to realise that the persons being defended could be the persons who have caused the death of more than 200 innocent citizens and, therefore, to urge citizens to realise the gravity of the situation, he has emphasised his right to express his feelings and/or opinion as regards what he felt about the Bomb Blasts and has clarified that he never meant to suggest that the lawyers are anti-national and his statement in the public meeting on 16/7/2006 was only an outburst of what he felt as a citizen of Mumbai and nothing more. Regarding his speech of 1/8/2006 he denies the veracity and appropriateness of the said newspapers reports and prays for the respective respondents to be put to strict proof thereof. He claims that his speech of 1/8/2006 was as under:-

> "if any of the said Lawyers family members were injured in the Bomb Blasts or had died therein, then would they have appeared, and therefore did it not matter and/or did it not

make a difference that almost 200 families were affected by the Bomb Blasts and how could the Lawyers accept such briefs, on a Moral Basis and how it did not appeal to their Conscience."

. The respondent no.1 thus admits that in his speech on 16/7/2006 he had stated that his party would stage demonstration against lawyers who would accept the brief of the accused in the Mumbai Bomb Blasts and he claims that any person is entitled to convene such demonstrations. He further admits that in his speech of 1/8/2006 he questioned the morality and consciousness of the lawyers who accept the brief of Mumbai Bomb Blast accused in the above quoted words and as per him the said statements do not amount to criminal contempt of court as defined under Section 2(c) of the Act. To conclude his reply, the respondent no.1 alleges that the petition has been filed on the basis of distorted newspaper reports and, therefore, the entire bed-rock of the petitioners' case is misplaced since it is not based on the actual statements made by him, but on the interpretation thereof by newspapers who have completely twisted his

statements. He has craved leave to refer to and rely upon the video recording of his speech on 1/8/2006. As per the respondent no.1 his statements were not meant to intimidate any person but were to inspire or make the people realise the deeds of terrorist and/or anti-national persons who caused the death of over 200 citizens and his statement was an expression of his bond to his country and countrymen and he did not see how his expression of opinion would disrupt the administration of justice, since those persons who were not moved by his expression would accept such briefs. He declares that he is aware about the cardinal principle, "an accused is innocent until proved guilty", and he is not going to physically prevent from accepting brief but had appealed to their moral conscience.

6. Mr.Suresh Rajeshwar, the first petitioner-party-in person argued before us stating that the reply filed by the respondent no.1 suffers from falsities and it is a twisted term only to escape from the clutches of contempt when a show-cause notice was issued to him and, therefore, the reply should be

discarded. The demonstrations, if and when held anywhere in Mumbai city would scare or put the lawyer community under fear and thereby discouraging or preventing any member of the bar from accepting the briefs of such accused even at the initial stages of bail application, leave alone when the actual trial starts after the charge-sheets are filed and if the lawyers are prevented by such intimidatory tactics, it would be certainly an act by the respondent no.1 which would prejudice or interfere or tend to interfere with the due course of any judicial proceedings or it would interfere or tend to interfere with or obstruct or tend to obstruct the administration of justice in any other manner.

7. Section 2(c) of the Act reads as under:-

"2. Definitions,- In this Act, unless the context otherwise requires,-

(a) .....

(b) .....

(c) "criminal contempt" means the publication

(whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which-

(i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any court; or

(ii) prejudices, or interferes or tends to interfere with, the due course of any judicial proceeding; or

(iii) interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice in any other manner."

The respondent no.1 has also placed reliance on the provisions of Section 3(2) of the Act and the explanation thereunder in support of the preliminary point that this petition is premature since when the alleged contemptuous speech was made on 16/7/2006 at Shivaji Park, the charge-sheet in the matter relating

to the train bomb blast that had occurred on 11/7/2006 had not been filed by the police. Section 3(2) and the explanation to the said section read as under:-

> "3.Innocent publication and distribution of matter not contempt- (1) .....
>
> (2) Notwithstanding anything to the contrary contained in this Act or any other law for the time being in force, the publication of any such matter as is mentioned in sub-section (1) in connection with any civil or criminal proceeding which is not pending at the time of publication shall not be deemed to constitute contempt of court.
>
> Explanation.- For the purposes of this section, a judicial proceeding -
>
> (a) is said to be pending -
>
> (A) .....
>
> (B) in the case of a criminal

proceeding under the Code of Criminal Procedure, 1898 (5 of 1898), or any other law -

(i) where it relates to the commission of an offence, when the charge-sheet or challan is filed, or when the court issues summons or warrant, as the case may be, against the accused, and

(ii) in any other case, when the court takes cognizance of the matter to which the proceeding relates, and

in the case of a civil or criminal proceedings, shall be deemed to continue to be pending until it is heard and finally decided, that is to say, in a case where an appeal or revision is competent, until the appeal or revision is heard and finally decided or, where no appeal or revision is preferred, until the period of limitation prescribed for

such appeal or revision has expired;

(b) which has been heard and finally decided

shall not be deemed to be pending merely by reason of the fact that proceedings for the execution of the decree, order or sentence passed therein are pending."

8. It needs to be clarified at this stage itself that this petition does not deal with any allegations or outbursts or threats or intimidations by the respondent no.1 in connection with any civil or criminal proceeding, is not in connection with any civil or criminal proceeding pending at the time of publication in the strict sense and the explanation has set out the meaning of "judicial proceedings pending". It is the case of the petitioners that the speeches made by the respondent no.1 would scare, intimidate and/or keep the members of the bar away from defending any of the accused at any stage, including even at the stage of bail applications when they are being presented before the Magistrate's court and thus obstruct or tends to obstruct the

administration of justice or prejudice or interfere or tends to interfere with the due course of any judicial proceeding. The petitioner no.1 submitted that the commencement of judicial proceeding is even from the time a person is arrested on suspicion of having committed or involved in the crime, a pendency of the criminal proceeding begins immediately after his production within 24 hours of his arrest before the Magistrate for remand. This issue is no more res integra in view of a Division Bench judgment of this court in the case of Prabhakar Laxman Mokashi vs. Sadanand Trimbak Yardi and ors. **(1975 Cri.L.J. 531)**. The said decision of this court supports the contentions of the respondent no.1 on this preliminary point in view of the scheme of Section 3 of the Act in its entirety. There is force in the preliminary issue raised about the maintainability of the petition at this stage, it being a premature petition.

9. However, we have proceeded to consider the petitioners' arguments on merit as well and we have noticed at the first place that there is no unanimity in the press reports and secondly the correctness of

the press report has been challenged by the respondent no.1. He has stoutly denied to have uttered the words as reported on 2/8/2006 or on 17/7/2006. The Marathi newspaper Loksatta in its report on 17/7/2006 merely stated that the respondent no.1 had threatened the persons accepting the briefs of the bomb blast accused that they would not be allowed to move on the roads, whereas the Free Press Journal report stated that the respondent no.1 warned Advocates against holding the briefs for the accused saying that his party would make it difficult for such Advocates to move around the city. Though these two reports are almost similar, but the report of the Hindustand Times goes much further. It reads attributing to the threats allegedly given by the respondent no.1, "We will thrash the advocate who takes up the case for the accused in the recent bomb blasts case". The respondent no.1 while denying that either he threatened the advocate of thrashing him or his party would make the advocate concerned difficult to move around the city of Mumbai, he reiterated that he did say that his party would stage demonstrations against the lawyers who accept the briefs of the accused in the Mumbai Bomb Blast case. Thus there is a

contradiction between the press reports and what the respondent no.1 claims to have said in the said public meeting held on 16/7/2006. Similar is the case in respect of the press report covering his speech of 1/8/2006.

10. A some what similar situation was considered by the apex court in the case of M.R. Parashar and ors. vs. Dr. Farooq Abdullah and ors. **(AIR 1984 SC 615)**. Dr. Farooq Abdullah as the Chief Minister of Jammu and Kashmir was alleged to have made statements which were reported as under in the newspaper (Daily Kashmir Times dated 13/11/1982 and 23/11/1982) :-

> "Chief Minister asks engineers to forcibly occupy club building, as it would not be possible for them to evict the Amar Singh Club through the normal legal process and that he would provide the necessary police assistance for that purpose, CM says he will never accept courts' stay orders, justice is being bought in the judicial courts, I will never honour these stay orders even if I am hanged."

. On receipt of the notice from the Supreme Court the newspapers had filed their affidavits confirming what was reported in the respective newspapers was as per the speech made by Dr.Farooq Abdullah, whereas the affidavit filed by Dr.Abdullah unequivocally denied to have said anything that was reported in the press. While recording a finding that the CM was not guilty of criminal contempt within the meaning of Section 2(c) of the Act, the Supreme Court in para 7 stated as under:-

> "7. If we were satisfied that the Chief Minister had made the statements attributed to him, it would have been a serious matter. Then, we could not have dismissed the peroration as an ill-tempered outburst of an uninformed person. Considering the high position which Chief Ministers occupy in the public life of our country, their words and deeds have to be presumed to be intended. The defence that what was said or done was not intended is not open to persons occupying high public offices. The formal expression of regard for the courts under the pressure of a contempt notice becomes a mere escape if speeches and writings betray defiance of judicial authority and constitute an exhortation to the public to disregard orders passed by courts. But, the Chief Minister denies to have made the utterances, as stoutly as the editor asserts that the reports of the speeches published in his newspaper are true. There is word against word, and no preponderating circumstance which,

> objectively, compels the acceptance of the word of one in preference to the word of the other. We have two responsible persons before us who pursue honourable professions: one is the Chief Minister of a State and the other is the editor of a newspaper. Both cannot be true in their contentions before us. One of them has clearly violated the law of contempt. If the Chief Minister said what is alleged, he is in contempt. If he has not, the editor has committed contempt by publishing a false report of a scurrilous speech that was never made. In face of denial by one and an assertion by the other without more, it is difficult to decide who is right. On one hand is the tendency to ridicule the system of justice and malign those who administer it. On the other is the propensity of the fourth estate for some little sensation and its political involvement. When political considerations pollute the stream of life, sifting truth from falsehood becomes a formidable and forbidding task. In these circumstances, we are unable to record a positive finding that the allegation that the Chief Minister made the particular statements is proved beyond a reasonable doubt. What is involved in this petition is criminal contempt and, therefore, it is necessary to apply that particular standard of proof."

11. When the veracity of the statements alleged to have been made by the respondent no.1 is doubtful, such statements do not make a case for taking cognizance for committing the respondent no.1 of criminal contempt in the instant petition, by following the law laid down in Dr.Abdullah's case (Supra).

12. Even otherwise, the respondent no.1 has tendered his unconditional and sincere apology before us. He has stated that he has utmost respect and regards to the courts of law and the rule of law as well as the paramount position of the courts of justice, so also the administration of justice. He has also unequivocally stated that he is not going to physically prevent any lawyer from accepting brief but he had only appealed to their moral conscience. He is also aware that an accused is innocent until proved guilty. We, therefore, have no doubts in accepting the apology tendered by the respondent no.1 being sincere and bona fide. As per him in his speech he never stated that he would prevent lawyers from accepting the brief of the accused in the bomb blast case but he would protest against them and in his reply he has clarified that he would not prevent any lawyer from accepting the brief of any of the accused in the Mumbai bomb blast cases. Mr. Gupte the learned Senior Counsel appearing for the respondent no.1, who was also present before us, clearly stated that no member of the bar would in any way be

prevented from accepting the brief of any of the accused in the Mumbai bomb blast cases and the respondent no.1 never intended to intimidate or threaten any member of the bar in his public speech of 16/7/2006 and 1/8/2006. We have no hesitation in accepting the apology tendered by the respondent no.1 and he is sincere in showing his repentance and remorse with regards the statements he admitted to have made on 16/7/2006 and 1/8/2006.

13. We are, therefore, satisfied that there is no case made out to take cognizance for committing the respondent no.1 for criminal contempt at this stage and, therefore, this petition fails at the threshold.

The same is hereby dismissed.

(J.H. Bhatia, J.) **(B.H. Marlapalle,J.)**